

Wednesday, October 15, 2003

The Board met at its office at 450 N Street, Sacramento, at 9:45 a.m., with Ms. Migden, Chairwoman, Mr. Parrish, Vice Chairman, Mr. Leonard, Mr. Chiang and Mr. Westly present.

PROPERTY TAXES HEARINGS

High Desert Power Trust (1127), 224484

2003, \$473,400,000.00 Unitary Value

For Petitioner:

Dannie A. Tobias, Attorney

Craig Udy, Senior Project Engineer

For Property and Special Taxes Department: Michael Lebeau, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the State Board of Equalization has the jurisdiction to assess the Petitioner's electrical generation facilities.

Whether the Board's Replacement Cost New value indicator was erroneous and excessive.

Whether the Board staff correctly calculated the land value of the Petitioner's facility.

Whether the Board included costs related to the construction of exempt assets in the 2003 Board-adopted unitary value.

Petitioner's Exhibit: Letters (Exhibit 10.1)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Exhibits to these minutes are incorporated by reference.

Ms. Migden requested that representatives be properly identified on the agenda and that the Participants are to self-identify themselves.

Mr. Leonard requested that the Property Tax Department include reference to Assembly Bill 81, Chapter 27, Statutes 2002 in hearing material.

SFPP, L.P. (461), 224890

2003, \$331,700,000.00 Unitary Value

For Petitioner:

Peter Michaels, Attorney

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Capitalized Earnings Ability value indicator should be reduced to reflect the payment of refunds ordered by FERC in 2003.

Whether the Board's CEA value indicator should be reduced to reflect any potential refunds resulting from pending rate case fillings.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard Mr. Chiang and Mr. Westly voting yes, the Board deferred consideration of this matter.

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Ms. Migden requested to know what formula/judgment is used for calculating the basis points with regard to unitary value.

Allegiance Telecom of California, Inc. (7742), 224482

2003, \$114,600,000.00 Unitary Value

For Petitioner:

Christopher R. Zamora, Senior Manager

Peter Hladek, Representative

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board's Replacement Cost Less Depreciation value indicator adequately recognizes obsolescence due to underutilization of property.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Calpoint (California), LLC (7971), 224153

2003, \$36,400,000.00 Unitary Value, \$3,640,000.00 Failure to Timely File Penalty

For Petitioner:

Richard L. Gunn, Consultant

Victor Gonzales, CPA

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether it is appropriate to abate the 10 percent penalty assessed by the Board pursuant to Revenue and Taxation Code section 830 for the Petitioner's failure to file property statement in a timely manner.

Whether the Board-adopted value recognizes the correct amount of economic obsolescence.

Whether the Capitalized Earnings Ability value indicator is an appropriate indicator of value for Petitioner's property.

Petitioner's Exhibit: Summary Discussion Points (Exhibit 10.2)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

Covad Communications Group (7706), 223876

2003, \$97,800,000.00 Unitary Value, \$9,780,000.00 Incomplete Filing Penalty

For Petitioner:

Ted Clark, Representative

Jeff Shamma, Representative

John Coates, Representative

For Property and Special Taxes Department: Paul Steinberg, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the reported cost of additions is in error.

Whether it is appropriate to abate the 10 percent penalty assessed by the Board pursuant to Revenue and Taxation Code section 830 relating to the incomplete filing of the Petitioner's property statement.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 10.3)

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Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON PETITIONS HEARD OCTOBER 15, 2003

Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition of *High Desert Power Trust (1127), 224484*, be denied and reduced the 2003 unitary value to \$429,600,000.00 as recommended by staff.

Upon motion of Mr. Westly, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition of *Allegiance Telecom of California, Inc. (7742), 224482*, be denied.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition of *Calpoint (California), LLC (7971), 224153*, be denied and the penalty abated.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition of *Covad Communications Group (7706), 223876*, be denied.

PROPERTY TAXES HEARINGS

Mirant Potrero, LLC (1108), 224116

2003, \$106,300,000.00 Unitary Value

Mirant Delta, LLC (1109), 224114

2003, \$521,300,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department: Anthony Epolite, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues in the Petition of 224116:

Whether the Board improperly calculated the Capitalized Earning Ability value indicator by not recognizing an adjustment to the Petitioner's income related to its Condition 2 RMR contract.

Whether the Board improperly calculated the Replacement Cost Less Depreciation value indicator by not including adjustments for the facility's under-utilization and heat rate inefficiency.

Issues in the Petition of 224114:

Whether the Board improperly calculated the Capitalized Earning Ability value indicator by basing the Petitioner's income projection on a Condition 1 RMR contract instead of a Condition 2 RMR contract.

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Whether the Board improperly calculated the Replacement Cost Less Depreciation value indicator by not including adjustments for the facility's under-utilization, heat rate inefficiency, and soft costs.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board deferred consideration of this matter to the November 18, 2003 Board meeting.

La Paloma Generating Trust Ltd. (1112), 224198

2003, \$681,000,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Anthony Epolite, Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether various direct and indirect costs are properly included in the Board's valuation of Construction Work in Progress under the Replacement Cost New Less Depreciation value indicator.

Action: Upon motion of Ms. Migden, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered the unitary value be reduced to \$623,000,000.00 as recommended by staff.

Riverside Canal Power Company (1120), 224762

2003, \$2,880,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Michael Lebeau, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the State Board of Equalization has the jurisdiction to assess the Petitioner's electrical generation facilities.

Whether the Board's Replacement Cost New value indicator was erroneous and excessive considering that the Petitioner's facility had been decommissioned.

Whether the Board staff correctly calculated the land value of the Petitioner's facility.

Action: Upon motion of Ms. Migden, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang, and Mr. Westly voting yes, the Board ordered the unitary value be reduced to \$1,440,000.00 as recommended by staff.

CALNEV Pipe Line, LLC (402), 224893

2003, \$70,500,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board's Capitalized Earnings Ability value indicator should be reduced to reflect a settlement agreement payment.

Whether the capitalization rate in the Capitalized Earnings Ability value indicator should be adjusted to reflect greater risk.

Action: Upon motion of Ms. Migden, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the petition be denied.

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RCN Telecom Services of California, Inc. (7775), 224607

2003, \$80,100,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Anthony Epolite, Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Board staff properly recognized the economic obsolescence of the Petitioner's property following the Petitioner's FASB 144 write-down of its assets.

Action: Upon motion of Mr. Westly, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the unitary value be reduced to \$50,500,000.00 as recommended by staff.

Electric Lightwave, Inc. (2430), 224765

2003, \$87,500,000.00 Unitary Value, \$8,750,000.00 Failure to File Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Mary Ann Alonzo, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Petitioner's unitary value should be reduced to reflect depreciation of the Company's assets in California.

Whether the Petitioner's 10 percent penalty imposed pursuant to section 830 of the Revenue and Taxation Code for failure to file a complete property statement should be abated.

Action: Upon motion of Mr. Westly, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the unitary value be reduced to \$45,870,000.00 as recommended by staff.

Altrio Communications, Inc. (7910), 224219

2003, \$62,800,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Petitioner's revision of projected revenue and operating results warrants a reduction in the Board-adopted unitary value due to economic obsolescence.

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the unitary value be reduced to \$55,300,000.00 as recommended by staff.

WilTel Communications, Inc. (7819), 235464

2003, \$240,700,000.00 Unitary Value, \$20,000,000.00 Incomplete and Untimely Filing Penalty

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board should abate the penalty for incomplete and untimely filing of the property statement.

Whether the Board-adopted unitary value should reflect a reduction for a 5 percent allowance for impairment.

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Whether a reduction for depreciation from the date of emergence from bankruptcy until the lien date is appropriate.

Whether a reduction for dark fiber is appropriate.

Action: Upon motion of Mr. Parrish, seconded by Mr. Westly and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Mr. Westly voting yes, the Board ordered that the incomplete and untimely filing penalty be canceled otherwise the petition be denied.

Seren Innovations, Inc. (7832), 224865

2003, \$180,300,000.00 Unitary Value

For Petitioner:

Peter Michaels, Attorney

Jon Sperring, Representative

For Property and Special Taxes Department: Mary Ann Alonzo, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board should have calculated and placed meaningful reliance on the comparative sales indicator of value to value Petitioner's property, based on the sale of another telecom company's assets in 2002.

Whether the sale of WINfirst's property is a comparable sale for purposes of using the comparative sales indicator of value to determine the fair market value of Petitioner's property.

Action: Mr. Parrish moved that the petitioner's property value be calculated using a 50 percent weighting for the board's ReplCLD cost value indicator and a 50 percent weighting for Petitioner's comparable sales value indicator. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Migden voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the unitary value be calculated, using a 75 percent weighting of the Board's ReplCLD cost value indicator and a 25 percent weighting of the Petitioner's comparable sales value indicator which reduced the unitary value to \$154,500,000.00.

Metromedia Fiber Network Services, Inc. (7837), 224024

2003, \$186,800,000.00 Unitary Value, \$18,680,000.00 Incomplete Filing Penalty

For Petitioner:

R. Richard Rhodes, Representative

Peter Michaels, Attorney

For Property and Special Taxes Department: Anthony Epolite, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether it is appropriate to abate the 10 percent penalty assessed by the Board pursuant to Revenue and Taxation Code section 830 relating to the incomplete filing of the Petitioner's property statement.

Whether the Board's 100 percent reliance on the Replacement Cost Less Depreciation value indicator resulted in fair market value assessment of the Petitioner's property.

Petitioner's Exhibit: Miscellaneous Documents (Exhibit 10.4)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Westly absent, the Board ordered that the petition be submitted for decision.

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Looking Glass Networks, Inc. (7861), 225257

2003, \$15,500,000.00 Unitary Value

For Petitioner:

R. Richard Rhodes, Representative

Peter Michaels, Attorney

For Property and Special Taxes Department: Paul Steinberg, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board recognized the proper amount of economic obsolescence in the Replacement Cost value indicator.

Petitioner's Exhibit: Appraisal Report(Exhibit 10.5)

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Westly absent, the Board ordered that the petition be submitted for decision.

ACC Telecommunications, LLC (7909), 224481

2003, \$20,900,000.00 Unitary Value

For Petitioner:

John White, CPA

For Property and Special Taxes Department: Michael Lebeau, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Board staff properly recognized the economic obsolescence of the Petitioner's property resulting from the winding-up of the Petitioner's operations in California.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Westly absent, the Board ordered that the petition be submitted for decision.

Alpine PCS, Inc. (2746), 224049

2003 \$24,900,000.00 Unitary Value

For Petitioner:

Robert Broz, President

For Property and Special Taxes Department: Lou Ambrose, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether additional obsolescence warrants a substantial reduction in the Board-adopted unitary value.

Whether a purchase offer for Petitioner's equipment is a reliable indicator of fair market value.

Action: Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang voting yes, Mr. Westly absent, the Board ordered that the petition be deferred to the November 18, 2003 meeting.

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Bakersfield Cellular Telephone Company (2622), 224205
2003, \$24,800,000.00 Unitary Value
Cagal Cellular Communications Corporation (2611), 224206
2003, \$13,600,000.00 Unitary Value
AT&T Wireless Services of California, LLC (2606), 224208
2003, \$320,200,000.00 Unitary Value
AT&T Wireless PCS, LLC (2749), 224211
2003, \$92,800,000.00 Unitary Value
Redding Cellular Partnership (2639), 224212
2003, \$3,470,000.00 Unitary Value
Salinas Cellular Telephone Company (2637), 224213
2003, \$15,500,000.00 Unitary Value
Santa Barbara Cellular Systems, Ltd. (2626), 235463
2003, \$34,400,000.00 Unitary Value
Yuba City Cellular Telephone Company (2643), 224216
2003, \$1,980,000.00 Unitary Value
Dobson Cellular Systems, Inc. (2675), 224217
2003, \$22,400,000.00 Unitary Value
Santa Cruz Cellular Telephone Company (2630), 224218
2003, \$8,547,000.00 Unitary Value

Peter Hladek, Representative

Pamela Willmoth, Tax Manager, AT&T

For Property and Special Taxes Department: Paul Steinberg, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board-adopted unitary value property takes into account functional obsolescence.

Whether the late filing penalty imposed on Santa Cruz Cellular Telephone Company should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard Mr. Chiang voting yes, Mr. Westly absent, the Board deferred consideration of this matter to the November 18, 2003 Board meeting.

Ms. Migden requested before staff recommends waiving a penalty, that the taxpayer provide a signed declaration under penalty of perjury stating why material was submitted late.

The Board recessed at 12:05 p.m. and reconvened at 1:05 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

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CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Michael R. Spence and Kevan Hunt, 195676

2000, \$5,292.32 Assessment

For Appellant:

Michael Spence

For Franchise Tax Board:

Christine Roloff, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to make a determination regarding abatement of the late filing penalty, and if so, whether appellants have shown "reasonable cause" for late filing.

Whether appellants have shown that respondent miscalculated the amount of interest at issue here.

Whether appellants have shown that the deficiency relating to the interest at issue here was attributable to an unreasonable error or delay by respondent's employees in performing a ministerial or managerial act.

Action: Mr. Leonard moved to abate the interest. Mr. Parrish seconded the motion but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Anthony Angelo Malfatti, 171092

1999, \$1,822.00 Tax, \$455.50 Late Filing Penalty, \$463.50 Notice and Demand Penalty

For Appellant:

Anthony Malfatti

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant establishes error in respondent's proposed assessment.

Whether appellant establishes reasonable cause for abatement of the late filing penalty and the notice and demand penalty

Whether appellant establishes a basis for abatement of the filing enforcement cost recovery fee.

Whether appellant maintained a frivolous or groundless position on appeal.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Douglas W. Samski, 183035

1999, \$2,587.00 Tax, \$909.75 Notice and Demand Penalty, \$646.75 Late Filing Penalty

For Appellant:

Douglas Samski

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has met his burden to prove error in the proposed assessment.

Whether the notice and demand and late filing penalties were properly imposed, and if so, whether appellant has shown reasonable cause for relief from either penalty.

Whether the filing enforcement fee was properly imposed.

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Whether a frivolous appeal penalty should be imposed, and if so, in what amount.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board submitted the appeal for decision.

SPECIAL TAXES APPEALS HEARINGS

Laron Enterprises, Inc., 113112

3-1-98 to 9-30-00, \$6,593.20 Tax, \$00.00 Penalty

For Petitioner: Pamela West, Representative

For Property and Special Taxes Department: M. Judith Nelson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner received, and reasonably relied upon, erroneous written advice from the Board and is entitled to relief under Revenue and Taxation Code section 7657.1.

Action: Upon motion of Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden absent, the Board ordered that the petition be submitted for decision.

SALES AND USE TAX APPEALS HEARINGS

Whitmire Distribution Corp. (AKA Cardinal Health 110, Inc.), 30641

7-1-93 to 9-30-96, \$79,972.03 Tax, \$00.00 Penalty

For Petitioner: Donald D. King, Representative

Richard E. Nielsen, Attorney

For Sales and Use Tax Department: John Waid, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's sales to hospitals and other health facilities of diabetic diagnostic supplies are exempt pursuant to California Code of Regulations, title 18, section (Regulation) 1591.1, subdivision (b)(5).

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Yehoshua Sagi, 150022

8-29-01, \$804.00 Claim for Refund

For Claimant: Tom Sagi, Representative

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether, due to the actions and inactions of Department of Motor Vehicle employees on August 14, 2001, claimant can obtain relief from use tax.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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PUBLIC HEARINGS

Adoption of Proposed Amendments to Sales and Use Tax Regulation 1591, Medicines and Medical Devices

Janice Thurston, Assistant Chief Counsel, Business Tax Division, Legal Department, made introductory remarks regarding the adoption of proposed amendments to *Sales and Use Tax Regulation 1591, Medicines and Medical Devices*, which is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6369. Amendments are proposed to provide that sales of breast and tissue expanders are exempt from tax under defined conditions (Exhibit 10.6).

Speakers: Eric J. Miethke, Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
Gale Pearson, Volunteer, American Cancer Society

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Chiang voting no, the Board the deleted the operative date.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the revised language to *Sales and Use Tax Regulation 1591, Medicines and Medical Devices*, and referred the regulation to the 15-day file.

BUSINESS TAXPAYERS' BILL OF RIGHTS HEARINGS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers: Cathy Stahler, Attorney, Representative
William M. Connell, Owner, Surf Dog

PROPERTY TAXPAYERS' BILL OF RIGHTS HEARINGS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing.

Speaker: Speakers were asked to address the Board but there were none.

LEGAL APPEALS MATTERS, ADJUDICATORY

Ozone Productions Ltd., 89000098650

Olivia Beren, 89000965750

7-1-94 to 6-30-97, \$15,091.74 Tax, \$00.00 Failure to File Penalty

1-1-91 to 12-31-97, \$2,373.89 Tax, \$237.45 Failure to File Penalty

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition for rehearing be denied.

Bobby R. and Mary H. Boydston, 37252, 37254

Action: The Board took no action.

McDonnell Douglas Corporation, 106386

1-1-95 to 2-31-97, \$1,963,420.55 Tax

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no, the Board ordered that the petition for rehearing be granted.

Porterville Ready Mix, Inc., 145627

1-1-98 to 12-31-00, \$12,764.56 Tax

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no and Mr. Parrish, abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Sally Bethea, 142352

2-24-99, \$9,532.50 Tax

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Palladium Investors, Inc., et al., 89002254320

10-1-94 to 9-30-97, \$24,159.76 Tax

Palladium Investors, Ltd., 154916

4-1-98 to 3-31-01, \$34,649.99 Tax

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Migden moved that the petition be redetermined as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Mr. Leonard, seconded by Ms. Mandel and duly carried, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden voting no, Mr. Parrish abstaining, Mr. Chiang not participating, the Board ordered that the petition granted.

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**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY**

Brian Zuchowski, 201813

1997, \$1,169.00 Assessment

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Parrish moved to grant interest abatement for the period 6-01 to 5-02 due to unreasonable delay. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

OII Third Partial Consent Decree Cash Account Escrow, 139239

1992, \$2,843.00 Tax, \$1,421.50 Late Filing and Failure to File Penalties

1993, \$9,558.00 Tax, \$4,779.00 Late Filing and Failure to File Penalties

1994, \$12,067.00 Tax, \$6,033.50 Late Filing and Failure to File Penalties

1995, \$28,707.00 Tax, \$14,353.50 Late Filing and Failure to File Penalties

1996, \$36,273.00 Tax, \$18,136.50 Late Filing and Failure to File Penalties

1997, \$37,007.00 Tax, \$18,503.50 Late Filing and Failure to File Penalties

Considered by the Board: September 11, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board took no action.

Allen Jerome and Toby Shafran, 142929

1992, \$45,415.00 Claim for Refund, \$9,083.00 Penalty (Claim for Refund)

1995, \$4,905.00 Assessment

Considered by the Board: September 11, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Chiang moved to sustain the action of the Franchise Tax Board. Mr. Parrish offered a substitute motion to sustain the action of the Franchise Tax Board, but grant interest abatement for the period 4-6-98 to 9-12-02 and abate the accuracy penalty. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS,
ADJUDICATORY**

Coherent Inc., 225019

1-1-02 to 12-31-02, \$113,742.00

Considered by the Board: September 10, 2003

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Wednesday, October 15, 2003

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *K-Mart Corporation*, 162539

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

United Partition Systems, Inc., 94636

4-1-97 to 9-30-99, \$24,881.68 Tax, \$3,276.78 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

K-Mart Corporation, 162539

1-2-97 to 12-27-00, \$1,629,420.20 Tax

Action: The Board deferred consideration of the following matter.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Jerome K. Carelock, 208991

2000, \$734.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Alex J. and Setsu Carter, 218716

1999, \$101.07 Claim for Refund

Action: Modify the action with concession by the Franchise Tax Board.

Donovan J. Cornwell, 186400

1999, \$1,921.00 Tax, \$480.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Rajinder J. Dheenshaw, 195045

2000, \$516.73 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Wednesday, October 15, 2003

Rudolph and Paula Sue Galistel, 205258

1989, \$4,059.07 Assessment

Action: Sustain the action of the Franchise Tax Board.

Scott G. Knight, 209803

1999, \$817.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Delfino M. Maciel, 218395

2000, \$1,247.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Benjamin Martinez, 218482

2000, \$423.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Clara Jean Sanchez, 206115

1994, \$2,286.50 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kimberly Walker, 216176

2001, \$648.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

James G. and Judy A. Wilkinson, 191228

1999, \$10,013.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Marvin E. Bryer, 134026

1997, \$1,060.00 Tax

Action: Deny the petition for rehearing.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Lourdes A. Cabanilla, 195775

2002, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Wednesday, October 15, 2003

Rudy Wilkerson Gaines, 208277

2002, \$400.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Cynthia Ann Hardeman, 208959

2002, \$347.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Stella L. Owens, 209888

2002, \$345.00 Claim for Credit

Action: Modify the action of the Franchise Tax Board.

Dolores Ray, 212622

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Philip Jevanian, 204050

2000, \$1.00 or more Claim for Credit

Action: Deny the petition for rehearing.

SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS FOR REFUND, CONSENT

The Board deferred consideration of the following matter: Wanpen Pirom, 111824.

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Artisan Pictures, Inc., 130656

7-1-95 to 12-31-98, \$489,074.41

Action: Approve the redetermination as recommended by staff.

Edwardo Orta, 130645

10-1-97 to 9-30-00, \$175,660.30

Action: Approve the redetermination as recommended by staff.

Gal Bar-Or, 209369

3-20-01, \$190,902.80

Action: Approve the redetermination as recommended by staff.

Micron Electronics, Inc., 217898

4-25-97 to 12-31-98, \$136,973.60

Action: Approve the redetermination as recommended by staff.

Wednesday, October 15, 2003

Anca, Inc., 202118

1-1-96 to 12-31-00, \$160,326.40

Action: Approve the redetermination as recommended by staff.

Alcone Marketing Group, Inc., 89002113960

10-1-93 to 12-31-95, \$255,937.46

Action: Approve the redetermination as recommended by staff.

Wanpen Pirom, 111824

11-17-97 to 4-24-00, \$207,010.49

Action: The Board deferred consideration of the following matter.

Investor's Business Daily, Inc., 115639

10-1-99 to 3-31-01, \$185,714.99

Action: Approve the denial of claim for refund as recommended by staff.

Valley Communications, Inc., 141908

7-1-98 to 3-31-01, \$218,271.65

Action: Approve the denial of claim for refund as recommended by staff.

Evergreen Intl. Airlines, Inc., 80619

1-1-99 to 12-31-00, \$121,648.05

Action: Approve the denial of claim for refund as recommended by staff.

Sequenom, Inc., 213353

7-1-01 to 9-30-01, \$56,163.00

Action: Approve the denial of claim for refund as recommended by staff.

Nova Crystals, Inc., 237190

1-1-01 to 12-31-02, \$298,168.40

Action: Approve the denial of claim for refund as recommended by staff.

Colgate-Palmolive Company, 235761

10-1-99 to 6-30-02, \$146,006.61

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

The Board deferred consideration of the following matters: *Universal Instruments Corporation, 235267 and HR Textron, Inc., 198086.*

Wednesday, October 15, 2003

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish not participating in *Clorox Company (The)*, 145359, and Mr. Chiang not participating in *Disney Direct Publishing*, 201847, and *National SemiConductor Corp.*, 194518, the Board made the following orders:

Advd Aerospace Research Conc., Inc., 235931

3-31-98, \$64,722.20

Action: Approve the credit and cancellation as recommended by staff.

Universal Instruments Corporation, 235267

7-1-01 to 9-30-01, \$52,683.00

Action: The Board deferred consideration of the following matter.

VWR International, Inc., 236684

10-1-02 to 12-31-02, \$68,311.05

Action: Approve the credit and cancellation as recommended by staff.

Tracy Ann Slater, 236513

1-1-99 to 12-31-01, \$1,874.47

Action: Approve the credit and cancellation as recommended by staff.

MJ Digital, 237050

7-1-01 to 6-30-02, \$59,430.23

Action: Approve the credit and cancellation as recommended by staff.

Polese Company, Inc., 237106

1-1-99 to 12-31-01, \$204,666.71

Action: Approve the credit and cancellation as recommended by staff.

HR Textron, Inc., 198086

1-1-01 to 6-30-02, \$69,612.41

Action: The Board deferred consideration of the following matter.

C & L Graphics, Inc., 60009

1-1-97 to 3-31-02, \$271,725.45

Action: Approve the refund as recommended by staff.

Disney Direct Publishing, 201847

4-1-00 to 12-31-01, \$57,761.05

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Superconductor Technologies, Inc., 156091

10-1-98 to 12-31-02, \$67,459.45

Action: Approve the refund as recommended by staff.

Wednesday, October 15, 2003

City of Hope National Medical Ctr., 236706

10-1-97 to 9-30-01, \$66,652.71

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 236636

4-1-99 to 3-31-01, \$97,612.50

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 235064

7-1-02 to 12-31-02, \$105,326.33

Action: Approve the refund as recommended by staff.

W. Los Angeles Hlth. Sys. Ltd. Ptn., 144013

7-1-98 to 9-30-01, \$95,615.90

Action: Approve the refund as recommended by staff.

Investor's Business Daily, Inc., 220960

4-1-99 to 12-31-02, \$175,527.54

Action: Approve the refund as recommended by staff.

Clorox Company (The), 145359

1-1-98 to 12-31-99, \$173,613.70

Action: Approve the refund as recommended by staff. Mr. Parrish not participating.

Diamond Micro Solutions, 190719

4-1-00 to 12-31-01, \$220,989.29

Action: Approve the refund as recommended by staff.

Coxcom, Inc., 221039

1-1-03 to 3-31-03, \$104,083.80

Action: Approve the refund as recommended by staff.

County of San Diego, 235903

7-1-99 to 6-30-02, \$201,201,227.68

Action: Approve the refund as recommended by staff.

Seal Furniture Systems San Diego, 235065

1-1-00 to 12-31-02, \$76,770.83

Action: Approve the refund as recommended by staff.

National SemiConductor Corp., 194518

9-26-96 to 12-24-00, \$1,235,730.44

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

Wednesday, October 15, 2003

Lifescan, Inc., 238717

10-1-99 to 6-30-01, \$4,647,567.48

Action: Approve the refund as recommended by staff.

CKS Partners, Inc., 28054

4-1-96 to 3-31-99, \$93,753.14

Action: Approve the refund as recommended by staff.

Golden I Credit Union (The), 229133

1-1-03 to 3-31-03, \$86,562.67

Action: Approve the refund as recommended by staff.

City of Redding, 224770

1-1-01 to 12-31-01, \$71,285.76

Action: Approve the refund as recommended by staff.

Fleet Capital Corporation, 129078

4-1-00 to 6-30-01, \$223,303.99

Action: Approve the refund as recommended by staff.

Hartness International, Inc., 197914

7-1-01 to 9-30-01, \$82,832.00

Action: Approve the refund as recommended by staff.

American Century Investment Mgmt., Inc., 220320

4-1-99 to 3-31-02, \$158,240.68

Action: Approve the refund as recommended by staff.

Nightfire Software, Inc., 236462

1-1-00 to 12-31-02, \$227,408.35

Action: Approve the refund as recommended by staff.

Ciena Corporation, 236602

7-1-99 to 12-31-02, \$328,716.10

Action: Approve the refund as recommended by staff.

Dominion Venture Finance LLC, 235752

1-1-00 to 6-30-02, \$161,032.43

Action: Approve the refund as recommended by staff.

Ritz Interactive, Inc., 235751

1-1-00 to 12-31-02, \$118,532.87

Action: Approve the refund as recommended by staff.

Wednesday, October 15, 2003

Nova Crystals, Inc., 190717

1-1-01 to 12-31-02, \$154,940.87

Action: Approve the refund as recommended by staff.

Deutsche Bank Securities, Inc., 235488

1-1-00 to 3-31-02, \$156,518.35

Action: Approve the refund as recommended by staff.

First American Leasing Company, 220273

1-1-03 to 3-31-03, \$74,013.16

Action: Approve the refund as recommended by staff.

Lucky Stores, Inc., 236463

11-02-97 to 1-31-98, \$251,672.72

Action: Approve the refund as recommended by staff.

West Coast Liquidators, Inc., 236409

7-1-98 to 9-30-01, \$107,815.21

Action: Approve the refund as recommended by staff.

Colgate-Palmolive Company, 235759

10-1-99 to 6-30-02, \$179,727.71

Action: Approve the refund as recommended by staff.

Air Products & Chemicals, Inc., 143617

7-1-98 to 9-30-01, \$141,596.60

Action: Approve the refund as recommended by staff.

Pacific Digital Image, 105953

10-1-97 to 9-30-00, \$190,828.89

Action: Approve the refund as recommended by staff.

Expert Semiconductor Technology, Inc., 222130

4-1-00 to 12-31-01, \$51,863.96

Action: Approve the refund as recommended by staff.

Trigem Enterprises, Inc., 195332

7-1-99 to 6-30-02, \$54,445.86

Action: Approve the refund as recommended by staff.

Kazi Food, Inc., 222524

1-1-03 to 3-31-03, \$74,904.13

Action: Approve the refund as recommended by staff.

Wednesday, October 15, 2003

Central Originating Lease Trust, 221042

1-1-03 to 3-31-03, \$663,735.60

Action: Approve the refund as recommended by staff.

Lobel Financial Corporation, 236084

1-1-00 to 3-31-02, \$59,297.88

Action: Approve the refund as recommended by staff.

Red Apple Morley, LLC, 216151

10-1-02 to 12-31-02, \$127,022.82

Action: Approve the refund as recommended by staff.

Nuvel Credit Corporation, 235754

10-1-98 to 3-31-02, \$275,137.08

Action: Approve the refund as recommended by staff.

SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 on *Sentry Insurance, A Mutual Company, 172252*, the Board made the following orders:

City of Chula Vista, 239223

4-1-00 to 12-31-00, \$52,701.09

Action: Approve the refund as recommended by staff.

Sentry Insurance, A Mutual Company, 172252

1-1-01 to 12-31-01, \$317,885.40

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX MATTERS, CONSENT

The Board deferred consideration of these matters: *Duke Energy Moss Landing, LLC, 225284, Duke Energy Morro Bay, LLC, 225287, Duke Energy Oakland, LLC, 224880, and Duke Energy South Bay, LLC, 224889.*

With respect to the Property Tax Matters, Consent Agenda, upon a single motion of Mr. Chiang, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Wednesday, October 15, 2003

Petitions for Reassessment of 2003 Unitary Value

Duke Energy Moss Landing, LLC, 225284

2003, \$981,800,000.00 Value

Action: The Board deferred consideration of this matter.

Duke Energy Morro Bay, LLC, 225287

2003, \$106,700,000.00 Value

Action: The Board deferred consideration of this matter.

Duke Energy Oakland, LLC, 224880

2003, \$14,200,000.00 Value

Action: The Board deferred consideration of this matter.

Duke Energy South Bay, LLC, 224889

2003, \$73,100,000.00 Value

Action: The Board deferred consideration of this matter.

Petitions for Penalty Abatement on 2003 Unitary Value

Evercom Systems, Inc., 222056

2003, \$393,000.00 Value, \$39,300.00 Penalty

Action: Deny the petition for penalty abatement on 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Verizon Avenue Corporation, 221746

2003, \$2,230,000.00 Value, \$223,000.00 Penalty

Action: Deny the petition for penalty abatement on 2003 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

**PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE
STATUTE**

With respect to the Property Taxes Matters Not Subject to Contributions Disclosure Statute Agenda, upon a single motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Chiang not participating, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Wednesday, October 15, 2003

Audit**Southern California Edison Company (148)**

1999 to 2002, (\$632,822,395.00) Unitary Excessive Assessment

1999 to 2002, \$36,664,417.00 Nonunitary Escaped Assessment

Action: Adopt the audit escaped assessments, plus assessment in lieu of interest as recommended by staff. Mr. Chiang not participating. Ms. Mandel not participating in accordance with Government Code section 7.9.

CHIEF COUNSEL MATTERS**RULEMAKING****Request for Authorization to Publish**

Jean Ograd, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, made introductory remarks regarding the request for authorization to publish proposed amendments to the State Board of Equalization's Conflict of Interest Code *Regulation 6001, General Provisions* (Exhibit 10.7).

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the request for authorization to publish proposed amendments to the State Board of Equalization's Conflict of Interest Code *Regulation 6001, General Provisions*.

Request for Authorization to Publish Property Tax Rule

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding the request for authorization to publish *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption* and approval of corresponding suggested legislation (Exhibit 10.8).

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the request for authorization to publish *Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption* and the corresponding suggested legislation.

ADMINISTRATIVE SESSION**EDUCATION OUTREACH FOR CONSTRUCTION CONTRACTORS**

Ramon J. Hirsig, Deputy Director, Sales and Use Tax Department, made introductory remarks regarding Sales and Use Tax Report on *Educational Outreach for Construction Contractors* (Example 10.9).

Wednesday, October 15, 2003

The Board recommended that the additional information regarding subcontractors accepting resale certificates to the construction contractors be inserted and mailed along with the Board's tax information bulletin.

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 10.9).

Patricia Jones, Senior Tax Representative, Stockton Branch Office
Michael W. Groover, Supervising Tax Auditor III, Torrance District Office
Eugene R. Wytrykus, Business Taxes Specialist I, West Covina District Office
Ralph L. Davis, Jr., Associate Tax Auditor, Norwalk District Office
Franklin K. Conner, Business Taxes Compliance Specialist, West Covina District Office
Dolores Giovenetti, Tax Technician, III, Stockton Branch Office
Otis J. Freeman, Tax Technician, III, San Francisco District Office
Bettyann Hamela, Secretary, Financial Management Division, Headquarters

Action: Adopt prepayment of Sales Tax on Motor Vehicle Fuel, Diesel Fuel and Jet Fuel (Exhibit 10.10).

Action: Approve report regarding Board policy on penalties (Exhibit 10.11).

Action: Approve Guidelines for Appraiser's Certifications and Training (Exhibit 10.12).

Action: Approve the October 2003 Assessors' Handbook Section 521, *Assessment of Agricultural and Open-Space Properties* for publication (Exhibit 10.13).

Action: Adopt the draft summons to County Assessors for the Board's December 2003 meeting (Exhibit 10.14).

BOARD COMMITTEE REPORTS

Business Taxes Committee

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the September 24, 2003 and October 15, 2003 Business Taxes Committee reports (Exhibit 10.15).

Wednesday, October 15, 2003

OFFERS IN COMPROMISE RECOMMENDATIONS

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, made introductory remarks regarding the Offers in Compromise Recommendations.

Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the *Offers in Compromise of Samuel J. Burris, Jr.*

FINAL ACTION ON PETITIONS HEARD OCTOBER 15, 2003

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard and Mr. Chiang voting yes, Mr. Parrish abstaining, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *Metromedia Fiber Network Services, Inc. (7837), 224024*, be denied.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *Looking Glass Networks, Inc. (7861), 225257*, be denied.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board ordered that the petition of *ACC Telecommunications, LLC (7909), 224481*, be denied.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Kim Walton, 205841

2002, \$347.50 Claim for Credit

For Claimant:

No Appearance

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, and Ms. Mandel voting yes, Mr. Chiang abstaining, the Board reversed the action of the Franchise Tax Board.

FINAL ACTION ON APPEALS HEARD OCTOBER 15, 2003

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, in the appeal of *Michael R. Spence and Kevan Hunt, 195676*, the Board sustained the action of the Franchise Tax Board.

Wednesday, October 15, 2003

Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Anthony Angelo Malfatti, 171092*, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, in the appeal of *Douglas W. Samski, 183035*, the Board sustained the action of the Franchise Tax Board and imposed a \$2,500.00 frivolous appeal penalty.

FINAL ACTION ON PETITIONS HEARD OCTOBER 15, 2003

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Laron Enterprises, Inc., 113112*, be redetermined as recommended by the Appeals Division.

Mr. Leonard moved to grant the petition of *Whitmire Distribution Corp. (AKA Cardinal Health 110, Inc.), 30641*. The motion was seconded by Mr. Parrish but failed to carry, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Parrish voting no, Mr. Chiang not participating.

The Board deferred consideration of this matter.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Yehoshua Sagi, 150022*, be redetermined as recommended by the Appeals Division.

SALES AND USE TAX APPEALS HEARINGS

Optikwerk, Inc., 133115

7-1-91 to 6-30-99, \$1,730.43 Tax, \$168.85 Failure to File Penalty, \$168.85 Finality Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayer was a retailer engaged in business in California during the relevant time periods.

Whether taxpayer received misinformation qualifying for relief from the tax.

Whether relief from the penalties for failure to file returns and for failure to timely pay the determination (finality Penalty) is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Migden and Mr. Chiang voting no, the Board ordered that the failure to file penalty and the finality penalty be cancelled otherwise redetermined as recommended by the Appeals Division.

Wednesday, October 15, 2003

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:15 p.m. and reconvened immediately in closed session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Govt. Code § 11126 (e)), settlements (Revenue and Taxation Code sections 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126 (a)).

The Board recessed at 3:35 p.m. and reconvened immediately in open session with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

The Board adjourned at 3:36 p.m.

The foregoing minutes are adopted by the Board on January 27, 2004.

Note: The following cases were removed from the calendar prior to the meeting: *AES Alamos, LLC (1100), 222549; AES Redondo Beach, LLC (1101), 222550; AES Huntington Beach, LLC (1102), 222551; AES Placerita, Inc. (1146), 224763; Elk Hills Power, LLC (1126), 224226; OnFiber Communications, Inc. (7892), 224743.*